

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,

v.

LENARD GIBBS,

Defendant.

CRIMINAL ACTION
NO. 1:17-CR-207-CAP-CMS

ORDER

This matter is before the court on the defendant's objections to the magistrate judge's report and recommendation ("R&R") [Doc. No. 37]. The defendant previously filed a motion to suppress cell site data and other evidence because he claims documents and records obtained from third parties under the Stored Communications Act, 18 U.S.C. § 2701 *et seq.* (the "Act"), were obtained without a warrant [Doc. No. 21]. The magistrate judge recommended that the motion be denied because, under current Eleventh Circuit precedent, obtaining documents and records from third parties under the Act does not amount to a search under the Fourth Amendment. *See United States v. Davis*, 785 F.3d 498 (11th Cir. 2015). The defendant nevertheless filed the motion to preserve any issues related to the manner in which his cell data was collected since the United States Supreme Court, he

claims, recently granted certiorari “on the legality and contours” of the Act [Doc. No. 21 at 1].

The defendant’s objection to the R&R is premised upon the same reason he filed the motion in the first place: to preserve the issue for later appeal if necessary. The court notes the defendant’s objection, but as it currently stands, the magistrate judge rightly found that the courts are required to follow binding Eleventh Circuit precedent, including the Eleventh Circuit’s holding in *Davis*. Indeed, defense counsel evidently recognized the appropriateness of this Circuit’s *stare decisis* during the pretrial conference. Accordingly, the defendant’s objection to the R&R [Doc. No. 42] is OVERRULED. The court adopts the magistrate judge’s recommendation that the motion to suppress [Doc. No. 21] be DENIED as the opinion and order of this court.

SO ORDERED this 15th day of August, 2017.

/s/CHARLES A. PANNELL, JR.
CHARLES A. PANNELL, JR.
United States District Judge